

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2535

Introduced by Assembly Member Ridley-Thomas

February 19, 2016

An act to amend Section 226 of the Labor Code, relating to wages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2535, as amended, Ridley-Thomas. Employment: wages: itemized statements.

Existing law requires an employer to provide his or her employee an *accurate* itemized statement *in writing* containing specified information, either semimonthly or at the time the employer pays the employee his or her wages. *That specified information includes showing total hours worked by the employee, unless the employee's compensation is solely based on a salary and the employee is exempt from payment of overtime under a specified statute or any applicable order of the Industrial Welfare Commission.*

This bill would ~~make nonsubstantive changes to that requirement; additionally exempt from that requirement for information on total work hours an employee exempt from payment of minimum wage and overtime whose compensation is not based in whole or in part on hours worked.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 226 of the Labor Code is amended to
2 read:

1 226. (a) An employer, semimonthly or at the time of each
2 payment of wages, shall furnish to his or her employee, either as
3 a detachable part of the check, draft, or voucher paying the
4 employee's wages, or separately if wages are paid by personal
5 check or cash, an accurate itemized statement in writing showing
6 (1) gross wages earned, (2) total hours worked by the employee,
7 unless the *employee is exempt from payment of minimum wage*
8 *and overtime and the employee's compensation is not based in*
9 *whole or in part on hours worked or the employee's compensation*
10 is solely based on a salary and the employee is exempt from
11 payment of overtime under subdivision (a) of Section 515 or any
12 applicable order of the Industrial Welfare Commission, (3) the
13 number of piece-rate units earned and any applicable piece rate if
14 the employee is paid on a piece-rate basis, (4) all deductions,
15 provided that all deductions made on written orders of the
16 employee may be aggregated and shown as one item, (5) net wages
17 earned, (6) the inclusive dates of the period for which the employee
18 is paid, (7) the name of the employee and only the last four digits
19 of his or her social security number or an employee identification
20 number other than a social security number, (8) the name and
21 address of the legal entity that is the employer and, if the employer
22 is a farm labor contractor, as defined in subdivision (b) of Section
23 1682, the name and address of the legal entity that secured the
24 services of the employer, and (9) all applicable hourly rates in
25 effect during the pay period and the corresponding number of hours
26 worked at each hourly rate by the employee and, beginning July
27 1, 2013, if the employer is a temporary services employer as
28 defined in Section 201.3, the rate of pay and the total hours worked
29 for each temporary services assignment. The deductions made
30 from payment of wages shall be recorded in ink or other indelible
31 form, properly dated, showing the month, day, and year, and a
32 copy of the statement and the record of the deductions shall be
33 kept on file by the employer for at least three years at the place of
34 employment or at a central location within the State of California.
35 For purposes of this subdivision, "copy" includes a duplicate of
36 the itemized statement provided to an employee or a
37 computer-generated record that accurately shows all of the
38 information required by this subdivision.

39 (b) An employer that is required by this code or any regulation
40 adopted pursuant to this code to keep the information required by

1 subdivision (a) shall afford current and former employees the right
2 to inspect or copy records pertaining to their employment, upon
3 reasonable request to the employer. The employer may take
4 reasonable steps to ensure the identity of a current or former
5 employee. If the employer provides copies of the records, the actual
6 cost of reproduction may be charged to the current or former
7 employee.

8 (c) An employer who receives a written or oral request to inspect
9 or copy records pursuant to subdivision (b) pertaining to a current
10 or former employee shall comply with the request as soon as
11 practicable, but no later than 21 calendar days from the date of the
12 request. A violation of this subdivision is an infraction.
13 Impossibility of performance, not caused by or a result of a
14 violation of law, shall be an affirmative defense for an employer
15 in any action alleging a violation of this subdivision. An employer
16 may designate the person to whom a request under this subdivision
17 will be made.

18 (d) This section does not apply to any employer of any person
19 employed by the owner or occupant of a residential dwelling whose
20 duties are incidental to the ownership, maintenance, or use of the
21 dwelling, including the care and supervision of children, or whose
22 duties are personal and not in the course of the trade, business,
23 profession, or occupation of the owner or occupant.

24 (e) (1) An employee suffering injury as a result of a knowing
25 and intentional failure by an employer to comply with subdivision
26 (a) is entitled to recover the greater of all actual damages or fifty
27 dollars (\$50) for the initial pay period in which a violation occurs
28 and one hundred dollars (\$100) per employee for each violation
29 in a subsequent pay period, not to exceed an aggregate penalty of
30 four thousand dollars (\$4,000), and is entitled to an award of costs
31 and reasonable attorney's fees.

32 (2) (A) An employee is deemed to suffer injury for purposes
33 of this subdivision if the employer fails to provide a wage
34 statement.

35 (B) An employee is deemed to suffer injury for purposes of this
36 subdivision if the employer fails to provide accurate and complete
37 information as required by any one or more of items (1) to (9),
38 inclusive, of subdivision (a) and the employee cannot promptly
39 and easily determine from the wage statement alone one or more
40 of the following:

1 (i) The amount of the gross wages or net wages paid to the
2 employee during the pay period or any of the other information
3 required to be provided on the itemized wage statement pursuant
4 to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

5 (ii) Which deductions the employer made from gross wages to
6 determine the net wages paid to the employee during the pay
7 period. Nothing in this subdivision alters the ability of the employer
8 to aggregate deductions consistent with the requirements of item
9 (4) of subdivision (a).

10 (iii) The name and address of the employer and, if the employer
11 is a farm labor contractor, as defined in subdivision (b) of Section
12 1682, the name and address of the legal entity that secured the
13 services of the employer during the pay period.

14 (iv) The name of the employee and only the last four digits of
15 his or her social security number or an employee identification
16 number other than a social security number.

17 (C) For purposes of this paragraph, “promptly and easily
18 determine” means a reasonable person would be able to readily
19 ascertain the information without reference to other documents or
20 information.

21 (3) For purposes of this subdivision, a “knowing and intentional
22 failure” does not include an isolated and unintentional payroll error
23 due to a clerical or inadvertent mistake. In reviewing for
24 compliance with this section, the factfinder may consider as a
25 relevant factor whether the employer, prior to an alleged violation,
26 has adopted and is in compliance with a set of policies, procedures,
27 and practices that fully comply with this section.

28 (f) A failure by an employer to permit a current or former
29 employee to inspect or copy records within the time set forth in
30 subdivision (c) entitles the current or former employee or the Labor
31 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
32 penalty from the employer.

33 (g) The listing by an employer of the name and address of the
34 legal entity that secured the services of the employer in the itemized
35 statement required by subdivision (a) shall not create any liability
36 on the part of that legal entity.

37 (h) An employee may also bring an action for injunctive relief
38 to ensure compliance with this section, and is entitled to an award
39 of costs and reasonable attorney’s fees.

1 (i) This section does not apply to the state, to any city, county,
2 city and county, district, or to any other governmental entity, except
3 that if the state or a city, county, city and county, district, or other
4 governmental entity furnishes its employees with a check, draft,
5 or voucher paying the employee's wages, the state or a city, county,
6 city and county, district, or other governmental entity shall use no
7 more than the last four digits of the employee's social security
8 number or shall use an employee identification number other than
9 the social security number on the itemized statement provided with
10 the check, draft, or voucher.

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